



# Orange County Municipal Storm Water Permit Renewal

Tentative Order No. R9-2002-0001



Item 8

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# Background

- Orange County Municipal Storm Water Program in its 11th year.
- The Municipal Storm Water Permit is an NPDES Permit and Waste Discharge Requirement that implements the Clean Water Act, Federal Regulations, and Porter-Cologne Act.
- Goal is to protect the beneficial uses of receiving waters from the impacts of urban runoff.

# Background

- First permit issued in 1990 (Order No. 90-38)
  - Directed development and implementation of a Drainage Area Management Plan.
  - DAMP required to address residential, commercial, industrial, and construction activities.
  - Copermittees required to eliminate all identified illicit discharges and illegal connections “in the shortest time practicable.”
  - Copermittees required and adopt and enforce ordinances to implement management programs.

# Background

- Second permit issued in 1996 (Order No. 96-03)
  - Made the 3 yr. old DAMP an enforceable component of the Order.
  - Added program requirements to address municipal facilities and construction activities.
  - Included Receiving Water Limitations language that was appealed to and amended by the SWRCB.
  - Directed adoption and enforcement of Orange County Water Quality Ordinance (or equivalent).
  - Copermittees required to eliminate identified illicit discharges and illegal connections

# Process for Adoption of Tentative Order R9-2002-0001

- Second proposed permit from a municipal permit template developed for the San Diego Region.
- Multiple staff contributions (1995-2001).
- Adopted for San Diego County as Order No. 2001-01 and largely upheld in appeal by SWRCB.
- Draft Tentative Order for Orange County Released July 2, 2002.

# Public Review Process

- Lengthy public review process during the development of the template permit:
  - 4 drafts issued over 6 years.
  - 80% of requirements available for public review since 1998.
  - Over 2,000 comments received on 1995, 1998, and 2000 drafts.
  - Several Orange County Copermittees commented on the 2000 draft.

# Public Review Process

- Tentative Order R9-2002-0001 reflects and addresses previous comments.
- Tentative Order conforms to SWRCB direction in Order WQ 2001-15 on the appeal of the San Diego Municipal Storm Water Permit (Order No. 2001-01).

# Public Review Process

- Tentative Order has also had lengthy public review and comment.
  - 60 day written comment period.
  - 2 public workshops.
- Approximately 684 comments received and responded to on the Tentative Order.
  - Public Workshops and Written Comments.
- > 60% were duplicate comments
  - Duplicate comments consolidated and responded to as one comment.



# Changes in Tentative Order

- Each comment individually assessed to determine if permit change should be made
- Assessment included consideration of:
  - Potential water quality gains or losses.
  - Potential increases or decreases in implementation costs.
  - Number of parties with similar concerns.
  - SWRCB and USEPA guidance.

# Changes in Tentative Order

- 2 Categories or Types of Changes
  - Changes to clarify intent of permit.
  - Changes to improve implementation of permit requirements.
- Main result of changes is increased Copermitttee discretion in implementation of requirements
  - a primary request of Copermitttee comments.

# Changes in Tentative Order

- Result of Changes
  - Essentially no requirements were removed from permit.
  - Instead, requirements were changed to clarify intent or improve their implementation.
  - Changes provide more discretion in implementation of permit.
  - End result in water quality remains the same.
  - Changes therefore not considered significant.

# Summary of Most Recent Changes

- Tentative Order revised in December.
- Changes made were not significant and were logically foreseeable results of comments received; and
- Provided additional clarification and flexibility to the Copermittees.
- Tentative Order conforms to SWRCB Order WQ 2001-15.

# Supporting Documents

- Tentative Order R9-2002-0001
- Fact Sheet/Technical Report
- Permit Road Map
- Written Comments
- Response to Comments Document
- SWRCB Draft Order 2001-15
- RWQCB Response to draft SWRCB Order
- Letters regarding DAMP inadequacy

# Supporting Documents

- Permit Comparison - Tentative Order v. Order No. 2001-01.
- Permit Comparison - Tentative Order v. Order No. 96-03.
- Permit Comparison - Tentative Order v. Region 8 Tentative Order No. 2001-20.
- Recent News Articles

# Supporting Documents

- Public Announcements.
- November Errata Sheet.
- White Paper on Retail Gasoline Outlets.
- Final Errata Sheet
- Index to Common Municipal Storm.

# Major Issues and Common Misconceptions

- Most of the major issues are summarized in the Fact Sheet/Technical Report.
  - Section V (pp. 27-45).
  - Identified in the Index to “Common Municipal Storm Water Permit Issues”
  - Elsewhere as appropriate.
  - Briefly summarized below.



# California Environmental Quality Act (CEQA)

*Is the RWQCB required to meet CEQA requirements prior to adoption of the Tentative Order?*

- NPDES Permits and Waste Discharge Requirements are not subject to CEQA.
- California Water Code 13389 broadly exempts the RWQCB from the requirements of CEQA.
- RWQCB position upheld in SWRCB Orders 2000-11 and 2001-15.

# Unfunded Mandate

*Do the requirements of the Tentative Order constitute an “unfunded mandate?”*

- The requirements of the Tentative Order are not unfunded mandate and do not require reimbursement of costs under the California Constitution.
- Requirements are derived from the Clean Water Act.
- SWRCB has determined that RWQCB Orders are exempt from the requirement to provide reimbursement under the California Constitution.

# CWC section 13360

## Manner of Compliance

*Does the Tentative Order dictate the design and manner of compliance in which the Copermittees are to comply with its requirements?*

- The Tentative Order provides a framework and minimum standards.
- It does not prescribe manner of compliance
- RWQCB position has been upheld by the SWRCB in appeal.

# Water Quality Standards

*Do discharges from MS4s need to meet the water quality standards of the receiving waters to which they discharge?*

- Intensively debated and discussed in detail in the Fact Sheet and Response to Comments Document.
- SWRCB has ruled in Orders WQ 91-03, 98-01, 99-05, and 2001-15 that MS4s discharges must meet Water Quality Standards in receiving waters.

# Water Quality Standards

- In Order WQ 98-01, the SWRCB handed down precedential Receiving Water Limitations language that replaced similar language in Order 96-03.
- SWRCB revised this language in Order WQ 99-05 to comply with USEPA requirements.
- SWRCB Order WQ 2001-15 upheld with minor changes the RWQCB's language.
- The Tentative Order contains this precedential language and SWRCB mandated revisions.

# Water Quality Standards

- Defenders of Wildlife v. Browner (1999)
  - upheld USEPA requirements that MS4 discharges meet water quality standards on the basis of its discretion rather than on strict compliance with Clean Water Act.
- In Order WQ 2001-15, SWRCB has rejected the argument that the State must adopt wet weather water quality standards and affirmed that the Tentative Order must implement the Basin Plan when adopting Waste Discharge Requirements.

# Maximum Extent Practicable

*What is the definition of Maximum Extent Practicable and who defines it?*

- Extensive definition and discussion provided in the Supporting Documents.
- The Copermittees propose MEP through their urban runoff management plans and the RWQCB determines if MEP standard is being met.
- MEP refers to BMP implementation and includes economic factors.

# Maximum Extent Practicable

- MEP is not a “ceiling” that places a maximum limit on Copermittee efforts or responsibilities.
- MEP does not take precedence over Receiving Water Limitations requirements.
  - Both standards are applicable.
  - If MEP has been met, but MS4 discharges are causing or contributing to exceedances of water quality objectives, more stringent BMPs must be implemented.



# Dual Regulation

*Does the Tentative Order improperly shift responsibility for control of construction and industrial sources of pollutants to the Copermitees?*

- Dual regulation of construction and industrial activities was intended by USEPA in the promulgation of the Federal Regulations.

# Dual Regulation

- RWQCB enforces the General Statewide Permits.
- Municipalities enforce local ordinances that implement the permit requirements.

# Legal Authority

*Does the Tentative Order expand the RWQCB authority over local government in a manner not prescribed?*

*Does the Tentative Order exceed the legal authorities cited in the Supporting Documentation?*

# Legal Authority

- The Tentative Order does not expand legal authority over local government improperly.
  - Authority for the requirements contained in the Tentative Order is provided by the Clean Water Act and the Porter-Colgne Act.
  - The level of detail contained in the Tentative Order is supported by the Clean Water Act, the Porter-Cologne Act, and recent guidance from the USEPA and SWRCB.

# Additional Issues

- Addressed in Supporting Documents
- Citations Provided

# Discharge Prohibitions

*Does the Tentative Order prohibit washing my car, watering my lawn or washing my driveway?*

- Tentative Order does not prohibit:
  - Residential car washing,
  - lawn watering,
  - landscape irrigation,
  - De-minimis discharges identified in section B.2

# Discharge Prohibitions

- USEPA identified these as an exclusive list of de-minimis discharges.
- Prohibition on all other discharges mandated by Clean Water Act and Federal Regulations.
- These prohibitions have been in place since 1990.

# Discharge Prohibitions and Enforcement

- Copermittees are required to prohibit these discharges, but have flexibility to determine appropriate enforcement policy.
  - Education is an important enforcement tool.
  - Strict fines and other penalties are not mandated for all instances.
- Discussed in the Response to Comments Document on pp. 127-134 and pp. 137-141
- Fact Sheet/Technical Report pp. 83-85 and pp. 89-94



# Homeowners Associations and Common Interest Areas

*Does the Tentative Order improperly burden HOAs with permit compliance requirements?*

- Necessary for the municipalities to ensure that these areas within their jurisdictions are adequately addressed.
- Section F.6 (p. 37).
- Fact Sheet pp. 178- 179.
- Response to Comments Document pp. 207.

# Vulnerability to Enforcement and Third Party Legal Action

*Will adoption of the Tentative Order expose the Copermitttees to enforcement action or third party legal actions?*

- Receiving Water Limitations requirements and Discharge Prohibitions are in effect now.
- Adoption of the Tentative Order is in fact irrelevant to these requirements.

# Vulnerability to Enforcement and Third Party Legal Action

- The Tentative Order is not written to protect the Copermitees in all instances.
- Refer to Response to Comments Document pp. 39- 40 and pp. 120-125.

# Cost of Implementation

*Will the cost of implementation be prohibitive? Does the Regional Board have to perform a cost benefit analysis?*

- Costs will be greater, but the costs of not protecting our Regions receiving waters are just as great.
- However, the RWQCB is not required to conduct a cost benefit analysis.

# Cost of Implementation

- RWQCB must consider economic considerations in the adoption of the Tentative Order.
  - These are addressed in the supporting documents.
  - You will be able address them today.
- Refer to Section III of the Fact Sheet/Technical Report (pp. 11-16) and pp. 11-13 of the Response to Comments Document

# Adoption of a Template Permit

*Is it appropriate to adopt the San Diego Template permit for Orange County?*

*Does the Tentative Order discard the programs developed under previous permits?*

# Adoption of a Template Permit

- The adoption of the Tentative Order is appropriate and will facilitate the re-issuance of the permit on a watershed basis.
- Does not require discontinuation of programs developed under previous permits.
- Builds upon and focuses these programs for the next 5 year permit cycle.

# Adoption of a Template Permit

- Refer to the Response to Comments Document pp. 17-15
- Fact Sheet/Technical Report pp. 74-75 and Attachments 4 and 5.



# Summary

- Urban runoff is a primary contributor to water quality impairment in Orange County.
- Tentative Order based on and implements Federal law and regulations for the discharge of urban runoff.
- An extensive process has been undergone to develop Tentative Order R9-2002-0001 to address this specific problem.

# Summary

- Most of the requirements in the Tentative Order were upheld in Order No. 2001-01 in the appeal by SWRCB.
- Changes mandated by SWRCB Order 2001-15 have been made in the Tentative Order.

# Summary

- The Tentative Order is the correct permit at this time in light of water quality problems, projected urban growth, and the development of urban runoff management programs under the previous permits.
- It is time to implement and enforce the permit so water quality improvements can begin.

# Staff Recommendations

- Receive Public Testimony.
- Adopt Tentative Order R9-2002-0001.